

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 2144 of 2010(M/S)

**Departmental Appellate Officer/ Directorate, Social Welfare Department,
Uttarakhand, Haldwani District Nainital and another . Petitioners**

Versus

State Information Commission and others .. Respondents

**Mr. P.C. Bisht, Brief Holder for the petitioners. Mr. Vipul Sharma, Advocate
for respondent No.1.**

(Hon'ble B.S. Verma, J.)

Heard Mr. P.C. Bisht, Brief Holder for the petitioners and Mr. Vipul Sharma, Advocate for the respondent No.1. Learned counsel appearing on behalf of respondent No.1 has submitted that the writ petition may be disposed of finally without inviting the counter version.

By means of this petition the petitioners have sought the following relief-

(i) To issue a writ in the nature of certiorari to quash the impugned order dated 12-04-2010 passed by Chief Information Commissioner, State Commission Uttarakhand, Dehradun in Appeal No. A-2310/2010 contained as Annexure No.1 to the writ petition, after summoning the original of the same.

(ii) To issue a writ in the nature of mandamus commanding the respondent No.1 to decide the representation/review application dated 26-4-2010 and 23-7-2010 filed by the petitioner against the impugned order dated 12-4-2010. (iii) To issue a writ in the nature of ad-interim mandamus staying the effect and operation of the impugned order dated 12-4- 2010 passed by the Chief Information Commissioner, State Information Commission Uttarakhand, Dehradun in Appeal No. A-2310/2010.

According to the petitioner the information sought by respondent No.3 has been supplied to him. The respondent No.3 preferred an appeal before First Appellate Court for not supplying the information within time. When the first appeal was pending, the respondent No.3 preferred second appeal U/s 19(3) of the Act for not deciding the appeal within time by First Appellate Authority. The respondent No.2, Chief Information Commissioner while deciding the appeal imposed compensation of Rs. 2,700/- against 'public authority' and

recommended to initiate departmental inquiry against the First Appellate Authority by his Controlling Officer/Secretary, Social Welfare Department.

Learned Brief Holder appearing on behalf of the petitioner has contended that there is no such provision under Section 20 of the Right to Information Act to initiate the departmental inquiry against the First Appellate Authority and to impose penalty against the First Appellate Authority. I have perused the provision of Section 20 of Right to Information Act, which runs as below-

"20. Penalties.-

(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub- section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty- five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub- section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him."

Perusal of Section 20 of the Act shows that it makes a provision to impose penalty either on Central Public Information Officer or the State Public Information Officer. However, there is no provision to initiate departmental inquiry against the First Appellate Authority as per the Section 20 of the Act. It is further revealed that while imposing compensation against public authority concerned, in exercise of power of Section 19 (8)(b) of the Act, no reason has been assigned by the Chief Information Commissioner in the impugned order. Therefore, the impugned order passed by the Chief Information Commissioner is set aside. However, the respondent No.2 may pass a fresh reasoned order in respect of imposition of compensation against 'public authority' after affording an opportunity to the 'public authority' concerned. With the aforesaid direction the writ petition stands partly allowed.

Dated: 21-12-2010 (B.S. Verma, J.) ISB